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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 934

CLEM LOCKERTY, ANTHONY CARUSO, EDWARD A. CARROLL, ET AL., APPELLANTS,

vs.

CHARLES M. PHILLIPS, UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

FILED APRIL 16, 1943.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil 2780

CLEM LOCKERTY, ANTHONY CARUSO, EDWARD A. CARROLL, LEO OSHINSKI, and Enkay Packing Company, Inc. (Isie Schindel, Nathan Krupnick, Hugo Herbst, Isidore W. Feldman, and Seymour Feldman and Irving Sherman, Leo Schloss Inc., Metropolitan Beef Co. Inc., Gustave Sobo, Edwin Branigan, Edward Fishkin, Meyer Barnett, and Max Steinhardt '& Max Steinhardt, Inc. Riverview Packing Company Inc., Harry Theobald Jr., Saul Feld, Charles Feld, and Morris Feld, partners trading as Feld Brothers and Sidney Schweld and Sam Schweid, Albert Abeles, Max Tischler and Fred Horns) Intervening Plaintiffs, Plaintiffs,

vs.

CHARLES M. PHILLIPS, U. S. Attorney

DOCKET ENTRIES

1943.

March 8. Complaint filed.
March 8. Summons issued (2 copies).
March 9. Notice of motion for temporary restraining order filed.
March 10. Order designating Hon. Albert B. Maris, C. C. A. Judge Hon. Guy L. Fake and Hon. Thomas F. Meaney to hear case at Statutory hearing filed.
March 10. Summons returned served on Charles M. Phillips personally on March 9th filed.
March 10. Notice of motion for leave to intervene as party plaintiff filed (Leo Schloss Inc.).
March 11. Motion to dismiss filed.
March 11. Notice of application for interlocutory injunction restraining the enforcement of emergency price control Act of 1942, upon ground of Unconstitutionality filed.
March 11. Affidavit of Mailing filed.
March 11. Notice of motion of Kenneth Hansen for leave to intervene as party plaintiff filed.

DOCKET ENTRIES—Continued

March 11. Hearing on motion for temporary restraining order. Continued to be heard before Statutory Court on March 17th (Fake).

March 13. Notice of motion to intervene as party plaintiff filed (Isie Schindel).

[fol. 2]

March 13. Notice of motion to intervene as party plaintiff filed (Nathan Krupnick).

March 13. Affidavits of service of motion to dismiss filed (5).

March 15. Petition of Metropolitan Beef Co. Inc. and Albert Abeles and Max Tischler to intervene filed.

March 15. Notice of motion for leave to intervene filed (Met. Beef Co. et als.).

March 15. Notice of motion for leave to intervene as party plaintiff (Hugo Herbst).

March 15. Notice of motion to intervene as party plaintiff filed (Isidore W. Feldman and Seymour Feldman).

March 16. Petition of Clem Lockerty, et al. for preliminary injunction filed.

March 16. Motion for adjournment of Statutory court. (Adjourned to March 22 (Fake)).

March 16. Order adjourning statutory hearing filed (Mar. 22).

March 17. Hearing on motion to vacate or amend order of March 16, 1943 to include motion to dismiss. Denied without prejudice to renew motion to dismiss before Statutory court (Fake).

March 17. Order allowing intervention of Isie Schindel filed.

March 17. Order allowing intervention of Nathan Krupnick, filed.

March 17. Order allowing intervention of Hugo Herbst filed.

March 17. Order allowing intervention of Isidore W. Feldman and Seymour Feldman filed.

March 17. Notice of motion for leave to intervene as party plaintiff filed (Irving Sherman).

March 17. Affidavit of service of motion filed (I. Sherman).

DOCKET ENTRIES—Continued

March 17. Order permitting Irving Sherman to intervene filed.

March 19. Order permitting Leo Schloss Inc. to intervene as party plaintiff filed.

March 19. Notice of motion for order permitting plaintiffs to file amended or supplemental complaint filed.

March 19. Order adjourning statutory hearing filed (Mar. 26).

March 22. Order adjourning statutory hearing filed (Mar. 26).

March 22. Order permitting Metropolitan Beef Co. Inc. Albert Abeles and Max Tischler to intervene filed.

March 25. Notice of motion for leave to intervene as party plaintiff filed (Fred Horns).

March 26. Amended and Supplemental complaint filed.

March 26. Order permitting Fred Horns as party plaintiff filed.

[fol. 3]

March 26. Notice of motion for leave to intervene as party plaintiff filed (Gustave Sobo, Edwin Branigan).

March 26. Order permitting Gustave Sobo and Edwin Branigan to intervene as party plaintiff filed.

March 26. Notice of motion for leave to intervene as party plaintiff filed (Meyer Barnett and Edward Fishkin).

March 26. Order permitting Meyer Barnett and Edward Fishkin to intervene as party plaintiff, filed.

March 26. Notice of motion for leave to intervene as party plaintiffs filed (Max Steinhardt Inc. and Max Steinhardt).

March 26. Order permitting Max Steinhardt Inc. and Max Steinhardt to intervene as party plaintiffs filed.

March 26. Notice of motion for leave to intervene as party plaintiff filed (Irving Sherman).

March 26. Order permitting Irving Sherman to intervene as party plaintiff filed.

DOCKET ENTRIES—Continued

March 26. Statutory Hearing. See Minutes for several motions. Decision reserved (Maris, Fake and Meaney).
March 29. Opinion filed (Maris and Fake and Meaney).
April 2. Order granting motion to dismiss the amended and supplemental complaint filed.
April 2. Notice of motion to intervene as parties plaintiffs filed (Riverview Packing Co. Inc. and Harry Theobald, Jr.).
April 2. Notice of motion to intervene as parties plaintiffs filed (Feld Bros. Saul Feld, and Charles Feld and Morris Feld).
April 2. Notice of motion to intervene as parties plaintiffs filed (Sidney Schweid and Sam Schweid).
April 5. Hearing on motion to intervene as parties plaintiff re Riverview Packing Co. Inc. and Harry Theobald Jr. Feld Bros. Saul Feld Charles Feld and Morris Feld re Sidney Schweid and Sam Schweid. No opposition Court stated it thought it had no power to permit an order to be signed in that case is dismissed (Fake).
April 9. Petition for appeal filed (Supreme Court).
April 9. Assignment of Errors filed.
April 9. Citation issued.
April 9. Citation returned, service acknowledged April 9 filed.
April 9. Statement of Basis of Jurisdiction filed.
April 13. $200 Security for costs on appeal (Deposited in registry).
April 13. Certificate of Deposit of Security for costs filed.
[fol. 4]
April 13. Order permitting Riverview Packing Co. Inc., Harry Theobald, Jr. Saul Feld, Charles Feld and Morris Feld partners trading as Feld Brothers and Sidney Schweid and Sam Schweid to intervene as parties plaintiff filed.
April 13. Stipulation as to record on appeal filed.
April 13. Statement as to record on appeal filed.
April 13. Acknowledgment of service filed.

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR TEMPORARY RESTRAINING ORDER—Filed March 9, 1943

To: Charles M. Phillips, United States Attorney for the District of New Jersey, Post Office Building, Newark, New Jersey.

SIR:

Please Take Notice, that on Thursday, March 11, 1943 at ten o'clock in the forenoon (E. W. Y.) before Honorable Guy L. Fake, Judge of the United States District Court for the District of New Jersey at the Post Office Building, Newark, New Jersey, plaintiffs will move the Court for a temporary restraining order in the above entitled cause enjoining the defendants his assistants, agents, deputies, representatives and each of them from prosecuting or attempting to prosecute the indictments returned on February 9, 1942, which are more particularly described in the complaint hereunto annexed, and from moving the argument upon the motions to quash and abate said indictments and from attempting to institute any other or further prosecutions against them or either of them under the Emergency Price Control Act of 1942 until plaintiffs' application for an interlocutory injunction as prayed in said complaint, be heard and determined by three judges in accordance with the provisions of Title 28 U. S. C. A. Section 380(a) upon the grounds as follows:

[fols. 6-9] 1. Unless restrained, the defendant will immediately require plaintiffs to argue their motions to quash and abate the aforementioned indictments and if said motion is denied, move said indictments for trial, although the Court may have no jurisdiction to afford plaintiffs a hearing thereon unless said Emergency Price Control Act is declared unconstitutional by said three Judge Court and thereby immediate and irreputable injury, loss and damage will result to plaintiffs, as more particularly set forth in the verified complaint filed herein;

2. If the defendant acts in the aforementioned manner, any judgment which this Court may later render on final determination of this cause will be ineffective.

Harold Simandl, Attorney for Plaintiffs, 24 Branford Place, Newark, N. J.

STATE OF NEW JERSEY,
County of Essex, ss:

Martin M. Kurtz, being duly sworn upon his oath deposes and says:

On March 9, 1943 at about 10:30 A. M. I served a true copy of the within Notice of motion for temporary restraining order upon Charles M. Phillips, U. S. Attorney for the District of New Jersey by handing same to Mr. Hughes, U. S. Assistant District Attorney, personally.

Martin M. Kurtz.

Sworn and subscribed to before me this 9th day of March, 1943. Albert Freeman, A Master in Chancery of N. J.

[fol. 10] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—March 11, 1943

The defendant, Charles M. Phillips, United States Attorney for the District of New Jersey, moves that this action be dismissed for the following reasons:

1. The complaint fails to state a claim against defendant upon which relief can be granted.

2. The complaint would require the Court to consider the validity of regulations issued by the Administrator of the Office of Price Administration pursuant to the provisions of Section 2 of the Emergency Price Control Act of 1942 (56 Stat. 23) and requests the Court to stay, restrain, enjoin and set aside in whole or in part the provisions of said Act and of said regulations, and to enjoin the enforcement of said Act and of said regulations; and pursuant to Section 204(d) of said Act, the Court is without jurisdiction of the subject matter of the complaint or to grant the relief prayed therein.

3. The complaint is without equity in that it appears therefrom that plaintiffs have, and each of them has, an adequate remedy at law under said Emergency Price Control Act.

4. The complaint is without equity in that it appears therefrom that plaintiffs have, and each of them has, failed to exhaust their administrative and judicial remedies under the Emergency Price Control Act.

5. The complaint is without equity in that it appears therefrom that plaintiffs have, and each of them has, an adequate remedy at law in the defense of the criminal proceedings referred to in the complaint.

6. The complaint is without equity in that it fails to state any facts justifying equitable relief.

Charles M. Phillips, United States Attorney.

[fols. 11-16] Affidavit of service omitted in printing.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed March 11, 1943

To Honorable Francis Biddle, The Attorney General of The United States, Washington, D. C.

HONORABLE SIR:

Please Take Notice, that on Wednesday March 17th, 1943 at 10 o'clock (E. W. T.) in the forenoon in the Post Office Building, Newark, New Jersey, before Honorable Albert B. Maris, Circuit Judge, the Honorable Guy L. Fake and Honorable Thomas F. *Meany*, District Judges, (who have been duly designated by the Senior Circuit Judge to participate in hearing and determining the application hereinafter mentioned) plaintiffs, will press the application for an interlocutory injunction as prayed for in the complaint, annexed hereto and made a part hereof,

And Take Further Notice that at the same time, the plaintiffs will apply to said Court for an order appointing a Master to take depositions of witnesses residing within and without the State to be used in support of said application.

Respectfully, Harold Simandl, Attorney for plaintiffs, 24 Branford Place, Newark, New Jersey.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AND SUPPLEMENTAL COMPLAINT

1. Each of the above named plaintiffs is, and at all the times with respect to which he or it is hereinafter mentioned, was a citizen and resident of the State of New Jersey and within the judicial district of New Jersey. The defendant is the duly appointed, commissioned, qualified and acting United States District Attorney for the District of New Jersey and is, and at all the times with respect to which he is hereinafter mentioned, was a citizen and resident of said State.

2. This action arises under the Constitution of the United States, Article I, section 1; section 8, clause 18; section 10, clause 1; Article III, section 1; section 2, clause 3; the Fifth, Sixth and Eighth Amendments of the Constitution of the United States; the Emergency Price Control Act of 1942, as amended October 2, 1942, and Executive Order of the President of the United States No. 9250 issued on October 3, 1942, as hereinafter more fully appears.

3. The amount in controversy insofar as it refers to and affects each of the plaintiffs herein exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000) Dollars.

4. Each of the plaintiffs has been for many years, and is now, engaged as a wholesale merchant in buying and selling, and in handling and in dealing in and with meats in the Northern part of the State of New Jersey. For the purposes of their respective businesses, each has and maintains a substantial structure wherein are contained a refrigerator and the necessary equipment for the storage, handling, de-

livery and distribution of his or its said merchandise. Each employs a substantial force of salesmen, meat handlers and cutters, drivers and other personnel necessary in the conduct of his or its aforementioned business. Each of the [fol. 19] said plaintiffs has so conducted his or its said business that he or it now has hundreds of customers and a well established trade, and has created and now owns in addition to his or its tangible property and assets aforesaid and his or its very great investment therein, a good-will of immense value and constituting one of his or its most important and valuable assets. No combination of any kind now exists or at any time existed between or among plaintiffs to fix or otherwise affect the selling price of any article of meat dealt in by any of them, and unrestricted competition has always existed and does now exist between and among them.

5. Plaintiffs are not slaughterers of cattle or live stock. They purchase dressed meat which has been "inspected and passed" under Federal Laws from those of the meat industry who purchase, slaughter and process live stock, known and hereinafter to be referred to as the "packers". After purchase, such dressed meat is transported to plaintiff's establishments where such meat is butchered into appropriate cuts to meet the requirements and demands of their customers. Plaintiffs sell and dispose of their merchandise to their respectice customers, who are, in the main, retail butchers maintaining small shops throughout the Northern part of the State of New Jersey. Said retail butchers dispose of their product to the ultimate consumer.

6. The packers ordinarily purchase the cattle for slaughtering purposes from cattle raisers, cattle feeders and others engaged in the business of scientifically breeding, raising, and generally preparing said cattle for marketing such animals for slaughtering purposes.

7. The price at which meat can be distributed by the wholesaler to the retailer, and by him in turn to the consumer, depends entirely upon the following factors:

(a) The market price paid by the packer for the live stock, in which must be included the cost of the agricultural commodities used in scientifically raising, breeding and feeding such live stock, as well as the expenses of main-

taining, handling and transporting same to the point where said live stock is purchased by the packers.

(b) The cost of the packer in acquiring and transporting same to his establishment, and the cost of killing, dressing, processing and distributing the dressed meat to the wholesaler.

(c) The cost of the wholesaler in acquiring, cutting, preparing, handling and delivering the dressed meat to the retailer.

(d) The cost of the retailer in finally selling the product to the ultimate consumer.

[fol. 20] In addition to these costs there must be included a reasonable and just profit to the cattle raiser or feeder, the packer, the wholesaler and retailer, if each of them is to remain in business and carry out the system of distribution necessary for the delivery of the processed meat in its final form to the ultimate consumer.

8. The supply of plaintiffs' meat products and of all others similarly situated is controlled and limited entirely by the number of cattle the packers conclude to slaughter. The number of cattle which the packers will undertake to slaughter, in turn, depends upon whether it is reasonably profitable for him to do so.

9. On January 30, 1942, there was enacted by the Congress of the United States, an act known as the "Emergency Price Control Act of 1942" (C. 26, 56 Stat. 23). Section 1a of said Act provides as follows:

"(a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue im-

pairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and juris- [fol. 21] diction, to work toward a stabilization of prices, fair and equitable wages, and cost of production."

10. Under said Act there was created the Office of Price Administration, and the President did duly appoint a Price Administrator (hereinafter referred to as "Administrator"), for the purpose of operating said Office of Price Administration.

11. Section 2 a of said Act purported to authorize the said Administrator, whenever in his judgment the price or prices of a commodity has risen or threatened to rise to an extent or in a manner inconsistent with the purposes of said Act as hereinbefore set forth, by regulation or order, to establish such maximum price or prices as will in his judgment be generally fair and equitable and will effectuate said purpose.

12. Said Act further purported to authorize the Administrator, from time to time, to issue such regulations and orders in manner and form as in his judgment are necessary or proper in order to carry out and effectuate the purposes and provisions of said Act, to direct the making and keeping of records and other documents and reports, and to establish such other offices throughout the United States, and to appoint such assistants, agents and employees as he might deem advisable or necessary for the operation and enforcement of said Act.

13. Section 202 a of said Act further purported to authorize said administrator to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order, or in the administration and enforcement of said Act and regulations, orders, and price schedules promulgated thereunder.

14. Section 3 of said Act provides as follows:

"(a) No maximum price shall be established or maintained for any agricultural commodity below the highest of any of the following prices, as determined and published by the Secretary of Agriculture: (1) 110 per centum of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials, or, in case a comparable price has been determined for such commodity under subsection (b), 110 per centum of such comparable price, adjusted in the same manner, in lieu of 110 per centum of the parity price so adjusted; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929.

[fol. 22] (b) For the purposes of this Act, parity prices shall be determined and published by the Secretary of Agriculture as authorized by law. In the case of any agricultural commodity other than the basic crops corn, wheat, cotton, rice, tobacco, and peanuts, the Secretary shall determine and publish a comparable price whenever he finds, after investigation and public hearing, that the production and consumption of such commodity has so changed in extent or character since the base period as to result in a price out of line with parity prices for basic commodities.

(c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

(d) Nothing contained in this Act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended,

or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto, heretofore or hereafter made or issued under the provisions of such Act.

(e) Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205 (a) and (b) to enforce compliance with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture.

(f) No provision of this Act or of any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section."

15. Section 205 (b) of said Act provides:

"Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought."

16. By Section 205 (c) of said Act, the Federal district courts are invested with jurisdiction of criminal proceedings brought for violations of Section 4 of said Act, and the rules and regulations promulgated thereunder.

[fol. 23] 17. Under and by virtue of the authority purported to be conferred by said Act there was established by said Administrator in the State of New Jersey, a branch office of said Office of Price Administration, and there was duly appointed such personnel as he deemed necessary to act in his behalf within the said State.

18. Thereafter, on or about April 28, 1942, the Administrator, assuming to act under the power allegedly delegated to him, promulgated the general maximum price regulation, under the terms of which he arbitrarily exempted and excepted from the operation thereof, certain commodities "for reasons of administrative impracticability resulting from lack of standardization of units, the fre-

quency and small size and character of the transactions involved, or some other factors. Examples of commodities excepted at all stages for administrative reasons include rare stamps, coins and books; antique furniture; live animals and the like. Other exceptions from the regulations are attributable to the fact that the commodities involved are subject to regulation at a subsequent stage of production or distribution where effective control may more feasibly be exercised. Such commodities include raw and unprocessed greenhouse or agricultural commodities."

19. Thereafter, on or about June 19, 1942, the Administrator assuming to act under the power allegedly delegated to him, promulgated a series of orders, regulations and price schedules, among which was Maximum Price Regulation No. 169, which purported to become effective by the terms thereof, on and after July 13, 1942, wherein he purported to prohibit the sale or delivery of any wholesale cut of beef at a price higher than the maximum price set forth in said regulation.

20. On October 2, 1942, there was enacted by Congress, an amendment to the Emergency Price Control Act of 1942, which inter alia provides as follows:

"2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this act; and may exercise any power or authority conferred upon him by this act through such department, agency, or officer as he shall direct. The President may suspend the provisions of Section 3 (a) and 3 (c), and Clause (1) of Section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this act, but he may not under the authority of this act suspend any other law or part thereof.

3. No maximum price shall be established or maintained for any agricultural commodity under authority of this act [fol. 24] or otherwise below a price which will reflect to producers of agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture:

(1) The parity price (such commodity adjusted by the Secretary of Agriculture for grade, location and seasonal

differentials) or, in case a comparable price has been determined for such commodity under and in accordance with the provisions of Section 3(B) of the Emergency Price Control Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials), or, if the market for such commodity was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use; and no maximum price shall be established or maintained under authority of this act or otherwise, for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in Clauses (1) and (2) of this section; Provided, that the President may, without regard to the limitation contained in Clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in Clause (1) of this section. Provided further, that modification shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case where it appears that such modification is necessary to increase the production of such commodity for war purposes or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs. Provided further, that in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including live stock, a generally fair and equitable margin shall be allowed for such processing: Provided further, that in fixing price maxi-

[fol. 25] mums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this act, adequate weighting shall be given to farm labor."

21. Under and by virtue of said Act, as amended, there was issued by the President, Executive Order No. 9250, October 3, 1942, 7 F. R. 7871, which, inter alia, provides as follows:

Title IV:

"1. The prices of agricultural commodities and of commodities manufactured or processed in whole or substantial part from any agricultural commodity shall be stabilized, so far as practicable, on the basis of levels which existed on September 15, 1942, and in compliance with the act of October 2, 1942.

2. In establishing, maintaining or adjusting maximum prices for agricultural commodities or for commodities processed or manufactured in whole or in substantial part from any agricultural commodity, appropriate deductions shall be made from parity price or comparable price for payments made under the Soil Conservation and Domestic Allotment Act, as amended, parity payments made under the Agricultural Adjustment Act of 1938, as amended, and governmental subsidies.

3. Subject to the directives on policy of the director, the price of agricultural commodities shall be established or maintained or adjusted jointly by the Secretary of Agriculture and the Price Administrator; and any disagreement between them shall be resolved by the director. The price of any commodity manufactured or processed in whole or in substantial part from an agricultural commodity shall be established or maintained or adjusted by the Price Administrator, in the same administrative manner provided for under the Emergency Price Control Act of 1942.

4. The provisions of Sections 3 (a) and 3 (c) of the Emergency Price Control Act of 1942 are hereby suspended to the extent that such provisions are inconsistent with any or all prices established under this order for agricultural commodities, or commodities manufactured or processed in whole or in substantial part from an agricultural commodity.

Title V:

1. The Price Administrator in fixing, reducing, or increasing prices, shall determine price ceilings in such a manner that profits are prevented which in his judgment are unreasonable or exorbitant."

[fol. 26] 21a. Thereafter, again assuming to act under and by authority conferred by said Act, the Price Administrator promulgated Revised Maximum Price Regulation No. 169, which became effective by the terms thereof on December 16, 1942, wherein he purported to prohibit the sale or delivery of any wholesale cut of beef at a price higher than the maximum price set forth in said regulations.

22. Notwithstanding the interrelationship between the price of live stock and the agricultural commodities used in breeding, raising and feeding said stock, as hereinbefore set forth, and the price at which the wholesaler and packer could sell the dressed meat, neither in Maximum Price Regulation No. 169, Revised Maximum Price Regulation No. 169, nor in any other regulation, at any time was there established by the Administrator any maximum price for the sale of such commodities and live stock by said Administrator.

22a. Under the setup of the meat industry as hereinbefore set forth which had been long and firmly established at the time of the adoption of said Act, there was such an interrelationship between the various stages in the operation of said industry, as hereinbefore set forth, that the inevitable result of the design and scheme of said Act would be such a rise in the prices of livestock and other agricultural commodities used in breeding, raising and feeding said livestock that the packer (who was and is an integral part of said system for the distribution of meat to the final consumer), would be unable to slaughter and process livestock without great loss, and therefore, would refuse to slaughter the same, bringing about a complete shutting off of the supply of meat to plaintiffs and others similarly situated, thereby forcing them out of business. Another inevitable result of the design and scheme of said Act would be to cause a complete shutting off of the supply of meat to the general public. What was thus contemplated and intended by said Act has, in fact, come to pass, and plaintiffs and others similarly situated are now on the verge

of being forced out of business and many others similarly situated have already been forced out of business. In addition, the supply of meat to the general public has been substantially stopped, making it virtually impossible for the general public to procure meat and thereby causing a clamor of the public for meat.

22b. Under the setup of the meat industry as it had been long and firmly established at the time of the adoption of said Act, as hereinbefore set forth, there was such an interrelationship between the various stages in the operation of said industry, as hereinabove set forth, that the application and construction of said Act by said Administrator caused such a rise in the price of the livestock and other [fol. 27] agricultural commodities used in breeding, raising and feeding said livestock that the packer (who was and is an integral factor in the distribution of meat to the final consumer) became unable to slaughter and process livestock without suffering great loss in his business and he therefore refused to slaughter the same, completely shutting off the supply of plaintiffs and others similarly situated for said meat, and forcing them out of business or putting them on the verge of being forced out of business. Another inevitable result of the Administrator's construction and application of said Act was to cause a substantial shutting off of the supply of meat to the general public, making it virtually impossible for many communities to procure meat.

23. On or about January 6, 1943, William Sherman Green, Jr., whose title is Chief Enforcement Attorney, Office of Price Administrator, Newark District Office, sent to several hundred retail meat dealers having shops in the Northern Part of the State of New Jersey, a communication (a photostatic copy of which is hereunto annexed, forms a part hereof, and is marked "Schedule A"). In said communication, said retail meat dealers were required to appear before the Chief Enforcement Attorney of the Office of Price Administration, Newark District Office, on the 8th day of January, 1943, at various hours "as a witness in regard to alleged violations of Maximum Price Regulations Nos. 169, 148 or 269." Said meat dealers were required to bring with them "all invoices, purchase slips, delivery tickets, books of account, checks and vouchers, together with all their records pertaining thereto, covering or referring to your purchases of beef, lamb, veal, pork and poultry

from October 1, 1942 to the date thereof." The appearance, text and format of said letter were such as to create the impression or belief to the addressee that such a letter was a mandate or a subpoena compelling him to comply with the terms thereof. Many of the customers of the plaintiffs and others similarly situated, were the recipients of said letter and hundreds of said recipients, in compliance with the mandate of said letter, went to the Office of the Price Administrator, where they were examined and exhibited their books, records and papers concerning purchases alleged to have been made by such recipients from plaintiffs and others similarly situated.

23a. At or about the same time, certain assistants of the Adminstrator appeared at the places of business of some of the plaintiffs herein and requested access to and custody of their books of account and other records pertaining to their purchases, sales and deliveries of meat and other commodities. Said investigators pursued their said investigation for many weeks and gained, through said investigation, the names and address of the customers of the plain-
[fol. 28] tiffs whom they were investigating. Said investigators have not as yet completed their said investigation.

24. One of the Administrator's Assistants, engaged in said investigation, appeared before a United States Commissioner, at Newark, and made criminal complaints against plaintiffs, and others similarly situated, charging alleged violations of the Emergency Price Control Act of 1942 and the regulations promulgated thereunder. Warrants were issued by the said United States Commissioner founded on said complaints and plaintiffs, and others similarly situated, were arrested and held to bail.

25. Thereafter, the defendant herein obtained leave of this Court to file criminal informations, each containing multiple Counts, charging the plaintiffs herein and others similarly situated with divers alleged violations of the Emergency Price Control Act of 1942 and the aforementioned Regulations 169 promulgated thereunder.

25a. Anthony Caruso, one of the plaintiffs herein, obtained a hearing on the complaint lodged against him before the said United States Commissioner, and at said hearing the Administrator's Assistant admitted that the testimony, upon which said complaint and criminal information

thereafter filed were based, was hearsay obtained from one of the plaintiffs' alleged customers who had been summoned to the office of the Administrator in manner aforesaid.

26. The aforementioned investigation of the Assistants of the Administrator continued. Several of the said investigators appeared before a Federal Grand Jury which was holding a session in this District and there sought and obtained the indictment of plaintiffs, and others similarly situated, for additional alleged violations of said Act and regulation.

27. After said indictment had been returned against plaintiffs and others similarly situated by said Federal Grand Jury, it was announced in the public press by those conducting said investigation that said investigation was not completed and that further indictments would be sough based upon information thus obtained.

28. The indictments were returned February 9, 1943, and each of said indictments contains multiple Counts ranging from five Counts to thirty Counts.

29. Each Count was based upon an alleged single sale of meat by each of the plaintiffs to one of his or its retail customers.

30. A typical Count contained in each of said indictment is as follows:

"1. At all times hereinafter mentioned in this indictment, Enkay Packing Company, Inc., was a Corporation of New [fol. 29] Jersey, and Nathan Krupnick was a resident of the County of Passaic, in the District aforesaid.

"2. That on or about the 2nd day of October, in the year 1942, at Paterson, in the County of Passaic and State and District of New Jersey and within the jurisdiction of this Court, Enkay Packing Company, Inc. Nathan Krupnick in violation of Section 4 (a) of the Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169, 'Beef and Veal Carcasses and Wholesale Cuts', as amended, did knowingly, wilfully and unlawfully sell and deliver to Central Beef Co., 82 Central Avenue, Passaic, New Jersey, a quantity of beef at a price in excess of the price permitted by said Regulation, to wit: 3,372 pounds of forequarters of

beef, of a grade to the Grand Jurors unknown, at the price per pound of 23½¢, and to a total amount of $792.42, the maximum price permitted by said Regulation for forequarters of beef of the Grade AA, being 22¢ per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

31. In many of the indictments based upon said single sale an additional Count was contained therein charging a further and additional violation of said Emergency Price Control Act of 1942 and said regulations promulgated thereunder arising out of the alleged failure to "make and preserve a complete and accurate record of such sale".

32. A typical Count of such charges is as follows:

"1. And the Grand Jurors aforesaid, inquiring aforesaid, on their oaths aforesaid, do hereby reallege and incorporate as if herein set forth in full, the allegations contained in Paragraphs 1 and 2 of Count I of this indictment.

"2. That on or about the date aforesaid, at Paterson, in the County of Passaic and State and District of New Jersey, and within the jurisdiction of this Court, Enkay Packing Company, Inc. Nathan Krupnick in violation of Section 4 (a) of the Emergency Price Control Act of 1942, and Maximum Price Regulation No. 169, did knowingly, wilfully and unlawfully fail to make and preserve a complete and accurate record of such sale, showing the date thereof, the name and address of the buyer and seller, the quantity, grade and weight of the forequarters of beef so sold, and the [fol. 30] price charged and received therefor, and did knowingly, wilfully and unlawfully record such sale and delivery as a sale and delivery of 3,372 pounds of fowl, at the price per pound of 23½¢ and to a total amount of $792.42; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States".

33. Section 205 (b) of the Emergency Price Control Act of 1942 provides as follows:

"Any person who willfully violates any provision of section 4 of this Act and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or

section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000.00, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment".

34. Each sale made by plaintiffs and others similarly situated, may, under the provisions of said Act and the regulations promulgated thereunder, involve and constitute a separate offense. In the business of each of the plaintiffs, and others similarly situated, hundreds of such transactions took place daily. As a result, plaintiffs are, and each of them is, subjected to the possibility of prosecution for each and every of the many transactions in which they daily necessarily took part. Having learned of the identity and addresses of plaintiffs' customers, the Administrator's Assistants have kept the shops of such customers under complete surveillance and have trailed and followed plaintiffs' delivery trucks while they were engaged in making deliveries to such customers. After plaintiffs' employees, or some of them, removed the meat from their trucks and placed it in the customers' shops, the Administrator's Assistants have entered such shops and have proceeded to interrogate such customers with regard to deliveries and purchases of said meat. They have inquired into all of the details of each transaction, and have demanded and taken with them the records of each customer regarding said transactions and other transactions had with plaintiffs or some of them or with others similarly situated. Such Administrator's Assistants have then required said customers to appear at the Newark office of the Administrator, and there subjected them to further interrogation. Such harassment of the customers has caused many of them to cease doing business with the plaintiffs herein and others similarly situated. Some of the Administrator's Assistants have publicly declared that it was the policy and intention of the Administrator to drive plaintiffs and others similarly situated out of business. A Federal Grand Jury of this [fol. 31] Honorable Court is still convened and subject to the call of the Court. The defendant, through his duly authorized assistant, has publicly announced that he has secured from the Administrator and his Assistants, and now has in his possession, evidence of further and other transactions obtained during the abovementioned investi-

gation. The defendant, through his assistants, has declared that he intends to, and will, unless prevented by injunctive order of this Honorable Court, present to said Grand Jury such testimony against plaintiffs and others similarly situated for the purpose of securing further and additional indictments based upon the alleged violations by plaintiffs and others similarly situated of said Emergency Control Act and the regulations promulgated thereunder, and in each of said indictments, he intends to and will make many, if not all, of said transactions, the basis of numerous separate charges and counts. Defendant, through his duly authorized assistants, has threatened to and will, unless prevented by this Honorable Court, urge such prosecutions to final conclusion. Said defendant, through his duly authorized assistants, has further threatened that if additional testimony is supplied to him by the Administrator's Assistants, he will in each instance, continue to present such testimony to the Grand Jury, and if possible obtain other and further indictments against plaintiffs and others similarly situated, upon what he has asserted to be numerous and almost innumerable violations of said Acts and the regulations promulgated thereunder, and he has threatened to and, unless prevented by this Court, will, urge such further and additional prosecutions to final conclusion. *There will thereby inevitably ensue enormous multiplicity of criminal proceedings in addition to the informations and indictments abovementioned.* The plaintiffs and each of them are merely of average financial means and worth, possessing assets (including their structures, plants, equipment, good will, accounts receivable, and moneys on hand) of upwards of $25,000 above their just liabilities. If plaintiffs or any of them are convicted upon the trials of such indictments, they may or will be compelled to pay such heavy fines that their entire assets will be wiped out and they and each of them will be left penniless. In addition, in the cases of the individual plaintiffs, they may be compelled to suffer imprisonment. If the defendant is not enjoined by the injunctive order of this Court from taking the course which he has threatened, and has actually entered upon, against plaintiffs, the Grand Jury and the Courts will be flooded with repeated, prolonged and expensive litigations, and the Public Treasury subjected to great loss, all of which will be wholly unnecessary and improper if, as plaintiffs con-

tend, the act and the regulations herein involved be declared invalid.

35. All of said plaintiffs are in the same situation; all have at all times earnestly, honestly and conscientiously [fol. 32] endeavored to exact no unlawful or excessive prices for their merchandise and are continuing and will continue so to do. Notwithstanding this, all of them and all others similarly situated, are exposed to and will suffer from the like procedure on the part of the defendant. But in the nature of things, indictments cannot and will not be returned against all of them at the same time, nor will all of them be prosecuted collectively or simultaneously and indictments or a prosecution for violation of said Acts and regulations promulgated thereunder against one or several of said plaintiffs, however unjustified, and whatever the ultimate result of the trial thereunder, will inevitably inflict upon the one or the ones so attacked, great irreparable and immeasurable damage and injury, subject them to public odium, divert from them and to others in exactly the same situation, except that they have not yet been publicly attacked, business which they would otherwise enjoy and thereby greatly diminish, if not utterly destroy, the established business and good will which has been the result of years of honest and earnest effort and created by great expenditure of capital and energy, thereby great, irreparable and immeasurable damage and loss will be inflicted.

36. Plaintiffs have been advised by their counsel and allege that the aforementioned acts, information and indictments and the threatened prosecution by defendant of plaintiffs and others similarly situated, are and must be based upon the assertion and contention that the said Emergency Price Control Act of 1942 in so far as applies to plaintiffs or any of them is valid and effective. But said Act was at the times mentioned in said informations and indictments and now is wholly invalid, ineffective, null and void for the following reasons, to wit:

(a) As an attempted regulation of prices, charges or transactions, said Act, as to these plaintiffs, is wholly invalid and unconstitutional because such power of regulation is in any event a legislative power and pertains to and may be exercised by the legislative branch of the government alone. But in and by said Act the legislative de-

partment has not itself established or defined the basis of such regulation of prices, charges or transactions, but has attempted thereby to delegate to a wholly different department or departments, to wit, to the Administrator, the right and the power in each particular instance and by differing standards to so regulate, thereby violating the provisions of the Constitution of the United States and the amendments thereto, whereby the powers of Government are classified and assigned to the three great departments, to wit, legislative, executive and judicial, and each is prohibited from exerting or attempting to exert a power belonging to either of the others.

[fol. 33] (b) Said Act is wholly invalid and unconstitutional because the attempted classification made in such Act whereby the prices of agricultural commodities, including live stock, are either wholly exempt from the operation of said Act or are thereby given preferential treatment is unjust, unreasonable and arbitrary and deprives plaintiffs and each of them, as well as others similarly situated, of their property and rights without due process of law.

(c) Said Act is invalid and wholly unconstitutional because it is in conflict with the Fifth Amendment to the Constitution of the United States in that by said Act plaintiffs, and each of them, as well as others similarly situated, are deprived of their liberty and of their property without due process of law and their private property taken without just or any compensation.

(d) The business in which plaintiffs are engaged of buying, selling, handling and dealing in meat is not one of such public nature as to permit the regulation thereof by public authority of charges or prices employed, made or imposed in connection therewith. The Act of Congress herein involved constitutes an unreasonable interference with and deprivation of the right or liberty of contract and so deprives plaintiffs and each of them of their liberty and of their property without due or proper process of law.

(e) The said Act is wholly invalid and unconstitutional because it fails to set forth therein any certain or proper standard course or procedure or certain rules of decision to guide said Administrator in the performance of his duties and authority or functions in contravention of the Constitution of the United States and amendments thereto.

(f) Said Act is wholly invalid and unconstitutional because it contravenes the Fifth and Sixth Amendments to the Constitution of the United States in that it deprives them of their right to be informed of the nature and cause of the accusation and fails to define with requisite certainty what is forbidden and denounced.

37. Each of the plaintiffs interposed in answer to said indictments a motion to quash and abate same upon the grounds, inter alia, that said indictments did not charge an offense against the public laws of the United States, because the aforementioned Act and the regulations promulgated thereunder upon which they were based were unconstitutional, invalid and void. Plaintiffs prayed that the Court afford them an opportunity to be heard on said motion to quash.

37a. Plaintiffs are advised by their counsel and allege that because the unconstitutionality of said Act and the regulations promulgated thereunder are not in some re-
[fol. 34] spects patent, but must be established by competent evidence which can be produced, the trial court may decline to pause in said trial upon said indictments to receive such evidence and plaintiffs thereby will be unable adequately and properly to present such issue to the trial court for its determination.

38. Defendant herein threatens to and, unless prevented by injunctive order of this court, will move the trial of said indictments before said Court at an early date and will insist that the District Court vested with the power to try defendants upon said indictments is, by virtue of Sections 204 (c) and (d) of the Emergency Price Control Act of 1942, hereinafter set forth, without jurisdiction, power or authority to pass upon the legal sufficiency of the charges made in each of said indictments or to hear and determine the aforesaid motions made by plaintiffs attacking the validity of said indictment.

39. Section 204 (d) of the Emergency Price Control Act of 1942 created a Court of the United States to be known as the "Emergency Court of Appeals".

40. Section 204 (d) of the said Act provided:

"The Emergency Court of Appeals and the Supreme Court, upon review of judgments and orders of the Emer-

gency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2 of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule. Except as provided in this section, no Court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order or price schedule, or to restrain or enjoin the enforcement of any such provisions."

41. Section 204(c) further provides:

"The Court (Emergency Court of Appeals) shall have the powers of a District Court with respect to the jurisdiction conferred on it by this Act; except that the Court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under Section 2 on any price schedule effective in accordance with the provisions of Section 206."

[fol. 35] 42. The defendant will also urge and insist at the trial of the aforementioned indictments before the District Court vested with the right to try plaintiffs upon said indictment that said Court is by virtue of Sections 204 (c) and (d) of the aforementioned Act without jurisdiction, authority or power to inquire into the authority of the Administrator to promulgate the aforementioned regulations and to determine or decide whether said regulations were within the power alleged to have been conferred upon the Administrator by virtue of the said Act.

43. The plaintiffs have been advised by their Counsel and allege that Sections 204 (c) and (d) of said Statute are wholly unconstitutional, void, invalid and ineffective for the following reasons, among others:

(a) Said portions of said Statute are in conflict and repugnant to the provisions of Article III, Section 1 and Section 2, Clause 3, in that said provisions deprive the District Court vested with jurisdiction to try the plaintiffs on

said indictments from affording to them a full, fair, complete and impartial trial on all the issues involved therein within the State and District wherein said alleged crime was committed and deprives said Court of the power to determine its own jurisdiction over the subject matter of said issues.

(b) Said portions of said Act are repugnant to Amendment Five of the Constitution of the United States in that they deprive and deny to the plaintiffs herein the right to defend themselves by establishing that the Grand Jury has failed to return an indictment against them, charging a violation of a public law of the United States.

(c) Said portions of said Act are repugnant to Amendment Six of the Constitution of the United States in that they deprive and deny to the plaintiffs herein the right to a public trial in a criminal prosecution in the State and District wherein the crime is alleged to have been committed upon all of the issues embraced within said indictment and the offenses charged therein.

44. Unless this Court declares Sections 204 (c) and (d) invalid and unconstitutional, insofar as they affect the plaintiffs herein, as hereinabove stated, the trial Court may require them to proceed with the trial upon said indictments and its action in refusing to hear and pass upon the validity of said indictments and the issue presented by the motions to quash and abate cannot be reviewed on appeal, except on appeal from a possible judgment of conviction rendered after a long and expensive trial of said indictments. If the injunction sought by this action shall be granted or if this Court declares said acts unconstitutional and grants the other prayers and relief requested herein, a necessarily long [fol. 36] and protracted trial of the indictment will become unnecessary and much time of a trial judge, the United States Attorney, the Government's witnesses, the plaintiffs, their attorney and their witnesses and great expense to both Government and the plaintiffs would be saved. This action or application for an injunction must, pursuant to the Act of August 24, 1937, Chapter 754 (U. S. C. A. Title 28, Section 380 (a)) be heard and determined by three Judges from whose decision an appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof as provided by law.

44a. Plaintiffs have not nor has any of them voluntarily or knowingly waived their right to challenge the constitutionality of said Act or the regulations of the Administrator promulgated thereunder.

44b. Plaintiffs have been advised by their counsel and allege that the Administrator has no right, power, authority or jurisdiction to pass upon or judicially decide and determine any of the issues presented by plaintiff's attack on the constitutionality of the Emergency Price Control Act of 1942 or of the regulations promulgated thereunder.

45. By reason of the facts, hereinabove set forth, plaintiffs have no plain, speedy or adequate or any remedy whatsoever at law. They are wholly without remedy, save and except in equity here sought. Unless this bill is entertained and the relief here sought granted, plaintiffs, and each of them, will be and inevitably must be subjected to great, irreparable and immeasurable loss and damage for which they would have and could have no remedy whatever.

46. The questions involved herein and presented hereby are of common and general interest, not only to all of the plaintiffs named herein, but also to all other merchants and wholesale dealers in meats similarly situated.

This suit, therefore, is brought not only in behalf of the plaintiffs here named, but also in behalf of all others so similarly situated who may hereafter come in and be made parties plaintiff hereto, participate in the prosecution of this suit, and join in the expenses thereof.

Wherefore, the plaintiffs pray:

1. That a summons issue out of this Court directed to the defendant, requiring and commanding him to appear in this Court and in this action upon a day certain and answer the allegations of this complaint;

2. That the Court declare and decree the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942, and particularly Sections 204 (c) and (d) thereof wholly unconstitutional, invalid, null and void and of no effect as against the plaintiffs and each of them and all others similarly situated;

[fol. 37] 3. That there be issued herein a preliminary or interlocutory injunction, to remain in effect until the final

hearing of this cause, prohibiting the defendant, his assistants, deputies, agents and representatives, and each of them, from enforcing or attempting to enforce against the plaintiffs herein, or either or any of them, or against the officers, agents or representatives of them or either of them, said Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942, from prosecuting or attempting to prosecute the aforesaid indictments returned on February 9, 1942, more particularly described in this complaint, and from prosecuting or attempting to prosecute or instituting or attempting to institute any other or further prosecution or prosecutions against them or either of them under said Act and from in any manner interfering with them or either of them or with the business of them or either of them, or taking or attempting to take any steps whatsoever in respect to them or either of them or the businesses of them or either of them, under or by-virtue of any right or authority claimed to exist by reason of the said Act as amended or any part thereof; and that upon final hearing said injunction may be made permanent;

4. That the matter set forth herein be heard and determined by this Court and upon a date to be made by the Court, and that the Court provide a hearing by three judges, one of whom shall be a Circuit Judge, as provided by law, after due notice thereof; and

5. For such other, further and different relief as to the Court may seem meet and just in the premises and for costs in this behalf expended.

Harold Simandl, Attorney for Plaintiffs, 24 Branford Place, Newark, New Jersey.

Arthur T. Vanderbilt, Joseph A. Feder, Abram I. Bluestein, Barney Larkey, Harry Schaffer, Morris H. Cohn, Of Counsel.

[fol. 38] UNITED STATES OF AMERICA,
State of New Jersey,
District of New Jersey, ss.:

ANTHONY CARUSO, being duly sworn, on his oath, deposes and says:

1. I am one of the plaintiffs named in the aforementioned action. I have read the foregoing complaint and the facts contained therein are true.

2. I am a citizen and resident of the State of New Jersey and within the judicial district of New Jersey and I believe that the other plaintiffs named in this action are likewise citizens and residents of the State of New Jersey and within the judicial district of New Jersey. I also know that the Enkay Packing Company, Inc. is a corporation duly organized under the Laws of the State of New Jersey and has its principal place of business within the State and District of New Jersey.

3. The defendant, Charles M. Phillips, is the duly appointed and acting United States District Attorney for the District of New Jersey.

4. The amount in controversy in so far as it refers to and affects each of the plaintiffs herein, exceeds, exclusive of interests and costs, the sum of $3,000.00 as more fully appears from the allegations of the complaint.

5. I personally know Clem Lockerty, Edward A. Carroll and Leo Oshinski and Enkay Packing Company, Inc., who are also named as plaintiffs herein, for many years. Like myself, they are now and have been for many years in the past engaged as wholesale meat dealers buying and selling and handling meats in the northern part of the State of New Jersey. All of us each maintain a substantial plant containing the necessary equipment for the storage, handling and delivery of meat. All of us employ salesmen, meat handlers, cutters and drivers and other personnel who are required in the conduct of said business. We compete with one another and no combination of any kind has ever existed between us for fixing or otherwise affecting the selling price of meat.

6. We are not slaughterers of cattle, but purchase dressed government inspected meat from those known in the industry as "packers". We transport the meat, which we purchase, to our place of business where our employees cut it to meet the requirements and demands of our customers. We sell to retail butchers who maintain shops throughout the northern part of New Jersey. Our customers dispose of their products to the ultimate consumer.

[fol. 39] 7. As the result of my business experience, I am familiar with the meat industry and I state that the manner in which such industry is carried on is set forth in

paragraphs 6, 7, and 8 of the complaint. Under said set up of the meat industry which had been long and firmly established at the time of the adoption of the Emergency Price Control Act, there was such an inter-relationship between the various stages in the operation of said industry that the inevitable result of the design and scheme of said Act would be such a rise in the prices of livestock and other agricultural commodities used in breeding, raising and feeding said livestock, that the packer (who was and is an integral part of said system for the distribution of said meat to the final consumer) would be unable to slaughter and process livestock without great loss, and therefore, would refuse to slaughter the same, bringing about a complete shutting off of the supply of meat to us and others similarly situated, forcing us out of business. Another inevitable result of the design and scheme of said Act would be to cause a complete shutting off of the supply of meat to the general public. What the Act contemplated has come to pass since it has been in operation, and we and others similarly situated are now on the verge of being forced out of business, and many others similarly situated have already been forced out of business. In addition, the supply of meat to the general public has been substantially stopped, making it virtually impossible for the general public to procure meat, thereby causing a clamor of the public for meat.

8. On or about January 6, 1943, many of my customers exhibited to me a communication, which they had received, similar to the photostatic copy which is annexed to the complaint and marked "Schedule A".

9. Shortly thereafter said customers informed me that they had appeared at the Newark District Office of the Price Administrator and had undergone an examination by certain representatives of the office and had presented to them their records, books of accounts and other data pertaining to their purchases and sales of meat.

10. Shortly thereafter I was informed by the United States Marshal that I was required to appear before the United States Commissioner at Newark to answer to a criminal complaint charging me with violations of the Emergency Price Control Act of 1942 and the regulations promulgated thereunder. At that time I met other of the plaintiffs, who were similarly charged with such violations before said United States Commissioner. Subsequently, I

was advised that a criminal information had been filed against me in the United States District Court of New Jersey based upon the charges contained in said complaint. At a subsequent hearing before the Commission on said [fol. 40] complaint, Mr. Diamond of the office of the Administrator stated that the complaint and the criminal information are based on information obtained in a conversation with one of my customers who had appeared at the Administrator's office in response to the notice above mentioned.

11. When I appeared in the United States District Court to answer to the said criminal information I found that the other plaintiffs and other wholesale dealers were similarly charged in informations with like violations.

12. Thereafter on February 9, 1943, indictments were returned against me, the other plaintiffs and others similarly situated. Each of said indictments contained multiple Counts ranging from five to thirty counts.

13. Each Count of said indictments was based upon an alleged single sale by each of the plaintiffs and the other wholesale dealers to one of our or their retail customers.

14. A typical Count in each of said indictments is set forth in paragraph No. 30 of the complaint.

15. Some of the indictments based upon said single sale contained an additional Count, specifying an alleged further and additional violation of the Emergency Control Act of 1942 and the regulations promulgated thereunder, arising out of the alleged failure of said plaintiffs to "make and preserve a complete and accurate record of said sale".

16. A typical Count on such charge is set forth in Paragraph 32 of the complaint.

17. During the time aforesaid and thereafter, there have appeared in the press announcements by those having charge of enforcement of the aforementioned Act for the Office of Price Administration that said investigation was incomplete, had merely scratched the surface and required studies and that further indictments would be sought based upon the information still to be examined and presented.

18. I have at all times earnestly and honestly endeavored to exact no unlawful or excessive prices for my merchandise and am continuing and will continue so to do.

19. In the normal course of our businesses, we make hundreds of sales of meat each day. As a result, we, and each of us are subjected to the possibility of prosecution for each and every one of the many transactions in which we daily necessarily took part. Because of the indictments which have been found against me and the other plaintiffs, we, and each of us, have been subjected to public odium, and many of those who have heretofore dealt with [fol. 41] me have, without justification, refused to further deal with me. We have lost many of our customers because they have been subjected to harassment by those in charge of the enforcement of the aforementioned Act for the Office of Price Administration. After our employees have delivered meat to customers, investigators of the Price Administrator have entered our customers' shops and have subjected the customers to interrogation and required them to produce their records of purchases and sales of meat. Some of said customers have been required to appear at the Newark Office of the Price Administrator, where they were subjected to further interrogation. Some of the Administrator's assistants have declared that it was the policy and intention of the Administrator to drive us and others similarly situated out of business. We have since learned that additional information has been supplied by those having charge of enforcement of the Act for the Price Administrator to the defendant. A Federal Grand Jury for the District of New Jersey is still convened and subject to the call of the Court, and the defendant, through his assistant, has declared that he intends to present to said Grand Jury the additional aforementioned information supplied to him, as aforesaid, with the purpose of obtaining further and additional indictments against us and others similarly situated. In each of said indictments he intends to and will make many, if not all, of said transactions in which we are daily engaged the basis of numerous separate charges and counts, and the defendant, through his duly authorized assistants, has threatened to and will urge such prosecution to final conclusion. The defendant, through his duly authorized assistants, has further stated that if additional information is supplied to him by the

Administrator's assistants, he will, in each instance, continue to present such information to the Grand Jury, and, if possible, obtain other and further indictments against us and others similarly situated upon what defendant asserts to be numerous and almost innumerable violations of said Acts and the regulations promulgated thereunder. The other plaintiffs and I are of average financial means and worth, each of us possessing assets (including our structures, plants, equipment, good will, accounts receivable, and money on hand) of upwards of $25,000 above our just liabilities. If we, or any of us, are convicted upon the trials of such indictments, we may be or will be compelled to pay such heavy fines that our assets will be wiped out and we and each of us will be left penniless. In addition, such of the plaintiffs as are individuals may be compelled to suffer imprisonment.

20. In my behalf a motion to quash and abate the indictment against me was filed and I asked for a hearing upon said motion. I have been advised that the defendant intends to move the trial of said indictment at an early date. [fol. 42] I have been advised by my Counsel that the District Court at the insistence of the defendant may deny me an opportunity to be heard upon my motion addressed to said indictment for the reasons set forth in paragraphs 37a, 38, 39, 40, 41 and 42 of the complaint.

21. I have further been advised that unless this Court declares Sections 204 (c) and (d) of the Emergency Price Control Act of 1942 unconstitutional I may be required to proceed with the trial upon the indictment and will not be able to have the validity of said indictment decided by the Court at my trial and that I would for the reasons set forth in Paragraph 44 of the complaint have no adequate remedy, except through the intervention of this Court.

22. I have not, nor have any of plaintiffs, voluntarily or knowingly waived my or their right to challenge the constitutionality of said Act or the regulations of the Administrator promulgated thereunder.

.....

ANTHONY CARUSO.

Sworn and subscribed to before me
this day of March, 1943.

[fol. 43] UNITED STATES OF AMERICA,
State of New Jersey,
District of New Jersey, ss:

Nathan Krupnick, being duly sworn, on his oath, deposes and says:

That he is President of the Enkay Packing Company, Inc., a New Jersey corporation, one of the plaintiffs abovenamed; that such plaintiff is a corporation and for that reason he makes this verification in its behalf; that the facts stated in the foregoing complaint are within his knowledge and therefore he makes this verification on behalf of all the plaintiffs; that he has read the foregoing complaint and knows the contents thereof and the facts therein stated are true to the best of his knowledge and belief.

Nathan Krupnick.

Subscribed and sworn to before me this — of March, 1943. —— ——.

UNITED STATES OF AMERICA,
State of New Jersey,
District of New Jersey, ss:

Clem Lockerty, being duly sworn, on his oath, deposes and says:

That he is one of the plaintiffs above named; that he has read the foregoing complaint and knows the contents thereof and the facts therein stated are true to the best of his knowledge and belief.

Clem Lockerty.

Sworn and subscribed to before me this — day of March, 1943. —— ——.

[fol. 44] UNITED STATES OF AMERICA,
State of New Jersey,
District of New Jersey, ss:

Edward A. Carroll and Leo Oshinski being duly sworn upon their respective oaths depose and say:

That they are plaintiffs in the above matter; that they have read the foregoing complaint and know the contents

thereof and the facts therein stated are true to the best of their knowledge and belief.

Edward A. Carroll. Leo Oshinski.

Sworn and subscribed to before me this — day of March, 1943. —— ——.

———

SCHEDULE A

Form No. N. J. L. 54.

Office of Price Administration

20 Washington Place

Newark, New Jersey

To:

You are hereby requested to appear before the Chief Enforcement Attorney of the Office of Price Administration, Newark District Office, 20 Washington Place, City of Newark, on the 8th day of January, 1943, at the hour of 1:15 P. M., as a witness in regard to alleged violations of Maximum Price Regulations #169, #148 or #269. You are also requested to bring with you all invoices, purchase slips, delivery tickets, books of account, checks and vouchers, together with all other records pertaining thereto, covering or referring to your purchases of beef, lamb, veal, pork and poultry from October 1, 1942 to date.

Dated, January 6th, 1943.

Wm. Sherman Greene, Jr., Chief Enforcement Attorney, Office of Price Administration, Newark District Office, 20 Washington Place, Newark, N. J.

———

[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION SUR MOTION TO DISMISS

Before Maris, Circuit Judge, and Fake and Meaney, District Judges

MARIS, Circuit Judge:

The plaintiffs' amended and supplemental complaint seeks to have the defendant as United States Attorney for

the District of New Jersey enjoined from enforcing the Emergency Price Control Act of 1942 against the plaintiffs and in particular from prosecuting indictments returned and threatened to be returned against them thereunder. Since an injunction is sought to restrain the enforcement of an act of Congress a court of three judges has been constituted to hear the case under section 3 of the Act of August 24, 1937, 28 U. S. C. A. § 380a. The defendant moves to dismiss the complaint upon the ground, inter alia, that section 204 (d) of the Emergency Price Control Act expressly deprives this court of jurisdiction to grant the injunctive relief sought. The portion of that section relied upon by the defendant is as follows:

[fol. 46] "The Emergency Court of Appeals and the Supreme Court, upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2, of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule. Except as provided in this section, no Court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations, or orders, or making effective any such price schedule, or any provision of any such regulation, order or price schedule, or to restrain or enjoin the enforcement of any such provision."

It will be seen that the act expressly provides that no court, Federal, State or Territorial, except the Emergency Court of Appeals and the Supreme Court to the extent of their jurisdiction under the act, "shall have jurisdiction or power * * * to * * * enjoin * * * any provision of this act authorizing the issuance of such regulations or orders * * * or any provision of any such regulation, order * * * or to * * * enjoin the enforcement of any such provision." We think it is clear that this statutory provision, if valid, effectively withdraws from the district courts all jurisdiction and power to issue an injunction under the circumstances disclosed in the complaint before us. The plaintiffs urge, however, that the provisions of section 204 (d) are unconstitutional. Their con-

tention is that the section deprives all courts of the power to consider the constitutionality of the act and the section, therefore, deprives litigants of the right to raise that issue in any court. We think that this contention is without merit.

[fol. 47] The portion of section 204 (d) which we are considering deprives the courts of the country, other than the Emergency Court of Appeals, merely of jurisdiction and power to "stay, restrain, enjoin or set aside * * *" These words refer to the type of affirmative relief sought to be obtained from a court, the type being injunctive in its nature; they do not indicate or imply that a court may not consider the constitutionality of the act if that question arises incidentally in a criminal prosecution or civil suit. For example, we think it is clear that in a criminal prosecution or in a civil suit brought by the Price Administrator for an injunction to restrain a violation of the act or of a regulation issued thereunder section 204 (d) does not deprive the court of power to consider a defense based upon the alleged constitutionality of the act. When Congress desired to prohibit courts from considering the question of validity under any circumstances it knew how to do so by the use of appropriate language for in the very sentence which we are considering it deprives all courts except the Emergency Court of Appeals of power "to consider the validity of any such regulation, order or price schedule" but it does not here or elsewhere in terms prohibit the courts from considering the validity of the act itself.

The plaintiffs do not deny that the words, "stay, restrain and enjoin" refer to injunctive relief but they argue that the phrase "set aside" has a broaded meaning and that when Congress said that no court might "set aside" any provision of the act it meant that no court might declare it unconstitutional. We do not agree that the phrase was intended to have any such broad meaning as this. It is [fol. 48] a rule of statutory construction that language, if ambiguous, is to be construed, if possible, so as to make the enactment valid and effective. United States v. Powers, 307 U. S. 214 (1939). We think that the phrase "set aside" was intended to refer to cases in which affirmative relief against the statute is sought. An analogous procedure is that of appeal in which an appellate court may by its judgment set aside the judgment or order of the court or administrative agency under review. Whether any court

has jurisdiction to set aside an act of Congress in this sense we need not consider. For it is clear that Congress intended to make certain that no court would assume to exercise any such jurisdiction with respect to the Emergency Price Control Act.

We conclude that by section 204 (d) Congress has withdrawn from this court the jurisdiction and power to grant the injunction prayed for. That Congress had power thus to limit the jurisdiction of an inferior court of the United States is settled. Kline v. Burke Constr. Co., 260 U. S. 226 (1922); Lauf v. E. G. Shinner & Co., 303 U. S. 323 (1938). See also Smallwood v. Gallardo, 275 U. S. 56 (1927).

The complaint will be dismissed for want of jurisdiction.

[fol. 49] FAKE, District Judge, dissenting:

The majority opinion results in a final judgment dismissing the complaint. I find myself unable to concur in the reasoning thereof or in the result arrived at.

It appears on the face of the complaint that each of the plaintiffs is engaged in the business of buying and selling meats at wholesale in the northern part of the State of New Jersey. They complain that the enforcement of the Emergency Control Act of 1942, as amended, injuriously effects them in the operation of their respective businesses and has resulted in indictments being returned against them for alleged violations thereof. They assert that sections 204 (c) and (d) of the aforesaid Act leaves the District Court in which they are indicted without jurisdiction to pass upon the legal sufficiency of the charges contained in the indictments, and this they contend results in a deprivation of their respective constitutional rights. They seek equitable relief by way of a preliminary injunction out of this court to stay the United States Attorney from proceeding with the trials under the indictments until the final hearing of this cause.

The motion to dismiss is based, among other things, upon the assertion that to grant the relief sought this court must violate the express limitations placed upon its jurisdiction by virtue of Section 204 (d) of the Emergency Control Act.

The pertinent sentences of Section 204 (d) read as follows:

[fol. 50] "The Emergency Court of Appeals and the Supreme Court, upon review of judgments and orders of

the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2, of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule. Except as provided in this section, no Court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule or to stay, restrain, enjoin or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order or price schedule, or to restrain or enjoin the enforcement of any such provision."

It is clear that the first sentence above quoted intends to lodge exclusive jurisdiction in the Emergency Court of Appeals in the first instance to pass upon the "validity" of the regulations or orders issued under Section 2, which is the price control section, with jurisdiction to review vested in the United States Supreme Court. What does the word "validity" mean in this connection? Does it limit the consideration of a regulation or order to matters and things found wholly within the confines of the Emergency Act itself or does it also permit the two courts to consider validity from the angle of constitutionality? In my view there can be but one answer to this question: "Validity" as here contemplated must be arrived at not only within the four corners of the Act wherein evidence bearing upon arbitrary and capricious conduct may be considered but also it may be arrived at after a consideration of the pertinent constitutional provisions upon which the Act itself in the last analysis must find its justification. [fol. 51] It follows that the word "validity" in the sentence when coupled with the language conferring exclusive jurisdiction on the two courts, evidences an intent to prohibit the United States District Court for the District of New Jersey from exercising any authority to pass upon the constitutionality of the Emergency Act as it may arise at the trials under the indictments. In considering the second sentence of the Act above quoted, it is again equally clear that the letter and the spirit indicate an unmistakable intent to deprive the District Court of the right to "set aside" for unconstitutionality any provision of the Act

upon which the regulations or orders may be based. The words "set aside" must be given their usual and generally accepted effect and as used in this statute they preclude the setting aside of the Act for any and all reasons whatsoever. Section 380a of Title 28, pursuant to which this court is now sitting, uses the words "setting aside" in the same sense that a setting aside is what occurs to an Act of Congress when it is found to be "repugnant to the Constitution of the United States". So in the instant case if the Act were found to be unconstitutional it would be "set aside" and for nothing holden.

Considering both sentences together I can arrive at no other conclusion but that it was the studied intent and manifest desire of Congress to prohibit the District Courts of the United States, the Circuit Courts of Appeals and as well this three-judge Statutory Court, from exercising their usual powers to pass upon the constitutionality of the Emergency Control Act or of anything that might be attempted by way of rules or orders under the guise thereof. Moreover such construction involving as it does a total elimination of the injunctive powers of the courts is quite [fol. 52] in line with the modern tendency of Congress partially to strip the courts of their injunctive powers when the objects sought might be interrupted or invalidated by the exercise of equitable relief. This leaves the plaintiffs herein stripped of their constitutional rights in the only forum where they may be tried on the indictments pending against them. It deprives them of due process of law guaranteed by the Fifth Amendment and also invade their right to a full and complete trial in the state where the alleged crimes were committed as guaranteed by Article 3, Sec. 2, Clause 3 of the Constitution.

Since the plaintiffs herein must face indictments wherein issues are involved bearing on the words above considered their meaning should be positive and certain and no strained interpretation should be indulged to save the constitutionality of any part of the Act.

It is my thought that a temporary stay should issue and that we should proceed to final hearing on the complaint.

[fol. 53] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

Civil Action. File No. 2780

CLEM LOCKERTY, et als., Plaintiffs,

vs.

CHARLES M. PHILLIPS, United States Attorney for the District of New Jersey, Defendant

ORDER DISMISSING COMPLAINT—Filed April 2, 1943

The plaintiffs having filed their complaint and amended and supplemental complaint herein; the defendant having filed a motion to dismiss the amended and supplemental complaint and the plaintiffs having filed a motion herein for an interlocutory injunction; and the motions of the defendant and the plaintiffs having been regularly brought on before the Honorable Albert B. Maris, United States Circuit Judge, Guy L. Fake and Thomas F. Meaney, United States District Judges, the Court designated and convened as directed by the statute, sitting at Newark, New Jersey on March 26, 1943, and plaintiffs having appeared by Arthur T. Vanderbilt Esquire, of Counsel, and Harold Simandl, Esquire, attorney for the plaintiffs, and the defendant appearing pro se and by Robert L. Wright, Special Assistant to the Attorney General, and arguments having been heard; and the Court having filed its opinion sur motion to dismiss on March 29, 1943, a certified copy of which is annexed hereto and made a part hereof;

It is on this 2nd day of April, 1943, on motion of Charles M. Phillips United States Attorney, the defendant herein, for the reasons stated in the annexed copy of the opinion sur motion to dismiss, filed March 29, 1943.

[fol. 54] Ordered and Adjudged that the motion of defendant to dismiss the amended and supplemental complaint be granted and the amended and supplemental complaint is hereby dismissed for want of jurisdiction.

For the Court.

Thomas F. Meaney, United States District Judge.

The foregoing order is approved as to form only.

Arthur T. Vanderbilt, of Counsel with plaintiffs.

An exception is prayed and allowed to plaintiffs.

For the Court.

Thomas F. Meaney, Judge.

[fol. 55] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

Considering themselves aggrieved by the final order and judgment of the United States District Court for the District of New Jersey, made and entered in the above entitled cause on the second day of April, 1943, dismissing the amended and supplemental complaint herein, the plaintiffs therein appeal from said judgment to the Supreme Court of the United States.

The said final order is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners pray for the allowance of an appeal in said cause to the Supreme Court of the United States, agreeably to the statutes and rules of the Court in such case made and provided, and that a proper order touching the security required of the petitioners may be made.

Dated: April 9th, 1943.

Harold Simandl, Attorney for Petitioners Clem Lockerty, Anthony Caruso, Edward A. Carroll, Leo Oshinski and Enkay Packing Company, Inc.
Arthur T. Vanderbilt, of Counsel with Petitioners.

[fol. 56] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

The said Clem Lockerty, Anthony Caruso, Edward A. Carroll, Leo Oshinski and Enkay Packing Company, Inc., assign the following errors in the record and proceedings in the said cause:

1. The District Court erred in dismissing the amended and supplemental complaint herein.

2. The District Court erred in ordering and adjudging that the motion of the defendant to dismiss the amended

and supplemental complaint should be granted and in dismissing the amended and supplemental complaint herein for want of jurisdiction.

3. The District Court erred in ruling that Section 204(d) of the Emergency Price Control Act of 1942 (C. 26, 56 Stat. 23, 50 U. S. C. App. 924 (d)) has withdrawn from said Court Jurisdiction and power to grant the relief prayed for in the amended and supplemental complaint herein.

[fol. 57] 4. The District Court erred in dismissing the amended and supplemental complaint herein, thereby denying plaintiffs an injunction prohibiting the defendant from enforcing or attempting to enforce against the plaintiffs herein, or either or any of them, the provisions of the Emergency Price Control Act of 1942 (C. 26, 56 Stat. 23; 50 U. S. C. Sec. 901, *et seq.*), as amended by the Act of October 2, 1942 (C. 578, 56 Stat. —; 50 U. S. C. App. Secs. 961, *et seq.*).

5. The District Court erred in dismissing the amended and supplemental complaint herein, thereby denying plaintiffs an injunction prohibiting the defendant from prosecuting or attempting to prosecute the indictments returned on February 9, 1943 against the plaintiffs herein.

6. The District Court erred in dismissing the amended and supplemental complaint herein, thereby denying plaintiffs an injunction prohibiting the defendant from prosecuting or attempting to prosecute, or instituting or attempting to institute any other or further prosecution or prosecutions against the plaintiffs or either of them under said Emergency Price Control Act of 1942 as amended by the Act of October 2, 1942.

7. The District Court erred in dismissing the amended and supplemental complaint herein, thereby denying plaintiffs an injunction prohibiting the defendant from in any manner interfering with plaintiffs or either of them or with the business of plaintiffs or either of them under or by virtue of any right or authority claimed to exist by reason of the said Emergency Price Control Act of 1942 as amended, or any part thereof.

[fol. 58] 8. The District Court erred in dismissing the amended and supplemental complaint and in refusing to

adjudge that the Emergency Price Control Act of 1942 as amended is unconstitutional and invalid because it purports to improperly delegate the legislative power to the Price Administrator in violation of Article I, Section 1, of the Constitution of the United States.

9. The District Court erred in dismissing the amended and supplemental complaint and in refusing to adjudge that the Emergency Price Control Act of 1942 as amended is unconstitutional and invalid because it is in conflict with the Fifth Amendment to the Constitution of the United States in that the attempted classification made in said Act is unjust, unreasonable and arbitrary, and deprives plaintiffs and each of them as well as others similarly situated of their liberty and their property without due process of law and deprives them of their private property without just compensation.

10. The District Court erred in dismissing the amended and supplemental complaint and in refusing to adjudge that the Emergency Price Control Act of 1942 as amended is unconstitutional and invalid because it contravenes the Fifth and Sixth Amendments to the Constitution of the United States in that it deprives plaintiffs of their right to be informed of the nature and cause of the accusations made against them and fails to define with requisite certainty what is forbidden and denounced.

11. The District Court erred in dismissing the amended and supplemental complaint and in refusing to adjudge [fol. 59] that Section 204 of the Emergency Price Control Act of 1942 is unconstitutional and invalid because said section is in conflict with and repugnant to the provisions of Section 1 and Section 2, Clause 3 of Article III of the Constitution of the United States, in that said section deprives plaintiffs of a full, fair, complete and impartial trial on all the issues involved in the indictments returned against plaintiffs on February 9, 1942, within the State and District wherein said alleged crimes were committed.

12. The District Court erred in dismissing the amended and supplemental complaint and in refusing to adjudge that Section 204 of the Emergency Price Control Act of 1942 is unconstitutional and invalid because said section is in conflict with and repugnant to the provisions of the Fifth Amendment to the Constitution of the United States in that

it deprives and denies to the plaintiffs herein the right to defend themselves by establishing that the grand jury has failed to return an indictment against them charging a violation of the public law of the United States.

13. The District Court erred in dismissing the amended and supplemental complaint and in refusing to adjudge that Section 204 of the Emergency Price Control Act of 1942 is unconstitutional and invalid because said section is in conflict with and repugnant to the provisions of the Sixth Amendment to the Constitution of the United States in that it deprives and denies to the plaintiffs herein the right to a public trial in a criminal prosecution in the State and District wherein the crime is alleged to have been committed [fol. 60] upon all of the issues embraced within said indictments and the offenses charged therein.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said judgment of the United States District Court for the District of New Jersey entered on the 2nd day of April, 1943, in the above entitled cause, be reversed, and for such other lawful relief as may be just and equitable in the premises.

Dated: April 9th, 1943.

Harold Simandl, Attorney of Plaintiffs-Petitioners.
Arthur T. Vanderbilt, of Counsel with Plaintiffs-Petitioners.

[fols. 61-78] In the Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—April 9, 1943

The plaintiffs in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the District Court of the United States for the District of New Jersey on the second day of April, 1943, and having presented and filed their petition of appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is *Ordered* that an appeal be, and the same is, hereby allowed to the Supreme Court of the United States from the District Court of the United States for the District of New Jersey in the above entitled cause, as provided by law; and it is further Ordered that the Clerk of the District Court of the United States for the District of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within ten days of this date.

And it is further Ordered that security for costs on appeal be fixed in the sum of ——.

Dated April 9th, 1943.

Thomas F. Meaney, U. S. A. J.

[fols. 79-80] Citation in usual form showing service on Charles Phillips, omitted in printing.

[fols. 81-82] Certificate of Deposit of Security for Costs omitted in printing.

[fol. 83] In the Supreme Court of the United States

Clem Lockerty, Anthony Caruso, Edward A. Carroll, Leo Oshinski and Enkay Packing Company, Inc., Plaintiffs-Appellants,

vs.

Charles M. Phillips, United States Attorney for the District of New Jersey, Defendant-Appellee

On Appeal to the Supreme Court of the United States

Stipulation as to Record—Filed April 13, 1943

It is hereby stipulated by and between the plaintiffs, by their counsel, and the defendant that the Clerk of the United States District Court for the District of New Jersey prepare a transcript on appeal herein, including the following portions of the record, to wit:

1. Docket entries.
2. Notice of motion for temporary restraining order (filed March 9, 1943).
3. Order designating Statutory Court (Filed March 10/43).

4. Defendant's motion to Dismiss.
5. Notice of application for Interlocutory Injunction restraining the enforcement of the Emergency Price Control Act of 1942 (filed March 11, 1943).
6. Amended and supplemental complaint.
7. Opinion of Statutory Court.
8. Order dismissing Amended and Supplemental Complaint, exclusive of the opinion attached thereto.
9. Petition for Appeal to the Supreme Court of the United States.
10. Assignment of Errors.
11. State of basis of jurisdiction.
12. Order allowing appeal.
13. Citation.
14. Proof of Service.
15. Statement referring to Rule 12, paragraph 3.
16. Certificate of deposit of Security for costs.

Charles M. Phillips, Counsel for defendant-appellee, U. S. Attorney. Arthur T. Vanderbilt, Counsel for Plaintiffs.

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] IN THE SUPREME COURT OF THE UNITED STATES

No. 934

STATEMENT OF POINTS AND DESIGNATION OF RECORD—Filed April 21, 1943

Come now the appellants and adopt their assignments of error as their statement of points to be ruled upon and represent that the whole of the record, as filed, is necessary for the consideration of the case.

Dated April 17, 1943.

Arthur T. Vanderbilt, Counsel for Appellants.

[fol. 86] SUPREME COURT OF THE UNITED STATES

No. 934, October Term, 1942

ORDER NOTING PROBABLE JURISDICTION—April 19, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted, and the case is advanced and assigned for argument on Monday, May 3, next.

Endorsed on Cover: Enter Arthur T. Vanderbilt. File No. 47,435. D. C. U. S., New Jersey, Term No. 934. Clem Lockerty, Anthony Caruso, Edward A. Carroll, et al., Appellants, vs. Charles M. Phillips, United States Attorney for the District of New Jersey. Filed April 16, 1943. Term No. 934 O. T. 1942.